IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.L.P..No. 511 of 2006()

CC.597/2002 of J.M.F.C., NOETH PARAVUR

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PETITIONER/APPELLANT/COMPLAINANT:

P.V. SUNIL DUTH, AGED 46,
S/O. VASU, PULLARKATT HOUSE,
KOTTUVALLIKAD, MOOTHAKUNNAM P.O.

BY ADV. SRI.K.G.SARATHKUMAR

RESPONDENTS: ACCUSED:

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1. K.M. ASHRAF, S/O. MOIDU,
AGED 56, MAZHUVANCHERIPARAMBU,
EACHARANGADI LANE, DESHABHIMANI ROAD,
KALOOR, KOCHI-17.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1- BY ADV. SRI.C.ANILKUMAR (KALLESSERIL)
R2-BY P.P.SRI.P. RAVINDRA BABU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.L.P.No.511 OF 2006

Dated this the 26th day of February, 2007.

O R D E R

This is an application for special leave to appeal against the judgment passed in C.C.No.597/2002 on the file of the Judicial Magistrate of First Class, North Paravur. The case of the petitioner/complainant is that he had issued a sum of Rs.50,000/= to the 1st respondent and in discharge of the above amount, the 1st respondent had issued Ext.P1 cheque. Further case of the petitioner is that when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund in the account of the 1st respondent. After the completion of the statutory provisions regarding notice etc., a complaint has been filed before the court. To prove the case against the 1st respondent before the trial court, the complainant himself was examined as PW1 and produced Exts.P1 to P5. After closing the complainant's evidence, the trial court questioned the 1st respondent under Section 313 of the Code of Criminal Procedure. Denying the allegations in the complaint, the 1st

respondent had stated that he had not issued Ext.P1 cheque to the complainant, at the same time, he had stated that he had a kuri transaction with the Palluruthy Chits and Kuries and had issued Ext.P1 cheque to the said Palluruthy Chits and Kuries. Further it is stated that the complainant is one of the Partners and Directors of Palluruthy Chits and Kuries and the cheque issued by the 1st respondent has been misused by the complainant. Further he had stated that he had already paid all the chitty amounts to the Palluruthy Chits and Kuries. To prove this case, the 1st respondent has examined three witnesses including himself. The 1st respondent also produced Exts.D1 to D4. After considering the entire case, the trial court found that the complainant/petitioner failed to prove that Ext.P1 cheque was issued in favour of the complainant in discharge of the legally enforcible debt. At the same time, the trial court had found that the case set up by the 1st respondent that Ext.P1 was issued to the Palluruthy Chits and Kuries and the same was misused by the petitioner/complainant is correct. Hence the trial court correctly found that the presumption available to the complainant under Sections 118 and 139 of the

Negotiable Instruments Act has already been rebutted by the 1st respondent by adducing the acceptable evidence.

In the above circumstances, this Court is of the view that the special leave petition is meritless and hence, it is accordingly dismissed.

K. THANKAPPAN, JUDGE.

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